

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2163.05
COMPLAINT INVESTIGATOR:	Sally Cook
DATE OF COMPLAINT:	August 25, 2004
DATE OF REPORT:	December 7, 2004
REQUEST FOR RECONSIDERATION:	yes/revised January 6, 2005
DATE OF CLOSURE:	February 24, 2005

COMPLAINT ISSUES:

Whether the Jay School Corporation violated:

511 IAC 7-21-6 by imposing charges for textbook rental and incidental fees that are prohibited by state law.

511 IAC 7-18-2 by failing to provide a free appropriate public education, as defined at 511 IAC 7-17-36 including the "at no cost" requirement defined at 511 IAC 7-17-7, specifically by charging fees that are not normally charged to nondisabled students or their parents.

On September 1, 2004, the Director of Special Education granted an extension of time until October 18, 2004, because the issue(s) are complex, novel, and affect all schools and all students with disabilities within the School Corporation. Before granting an extension, the Indiana Department of Education, Division of Exceptional Learners received an assurance statement from the Superintendent that no student is denied books, instructional materials and supplies, even if parents have not paid the fees or entered into a payment plan, and collection efforts are not instituted until the end of the school year. On October 18, 2004, the Director of Special Education granted a second extension of time because documents from the School were not received until October 12, 2004, due to the School's misunderstanding of the letter granting the first extension of time. On November 5, 2004, the Director of Special Education granted an extension of time until December 7, 2004, because of the need for a records review.

FINDINGS OF FACT:

1. This Complaint was filed on behalf of all students currently enrolled in the school corporation (School) who have been identified as disabled and determined eligible for special education and related services.
2. On May 24, 2004, the governing body of the School adopted a schedule of textbook rental and fees (Fee Schedule) for the 2004-2005 school year. The Fee Schedule includes fees for textbooks and supplemental books such as novels; workbooks, study guides, and other consumable instructional materials that cannot be re-used in subsequent years because students write answers in these materials; supplies such as art materials, food items used in home economics and life skills classes, batteries for calculators, chemicals and other materials used in science classes; technology supplies such as disks, printer paper, printer toner, etc.; and student handbooks, student agenda books, and a publication titled "Let's Talk Politics."

3. No fee designated as textbook rental exceeds 25% of the unit price (i.e., the purchase price plus shipping charges). All textbook rental fees are receipted to the textbook rental fund and accounted for separately from other fees.
4. Some fees for workbooks and instructional materials are equal to or less than the unit price stated in the Fee Schedule, while the Fee Schedule does not state a unit price for other materials or supplies. Except as shown on the Fee Schedule, the School did not submit calculations showing how the amounts of fees were determined for the 2004-2005 school year. The School acknowledges that fees are estimated on the basis of prior years' experience. The School purchases most supplies, including instructional materials, in bulk and determines a unit price on the basis of the bulk purchase price. The School submitted sample purchase orders and the School's Central Supply Price List. Teachers place orders for instructional materials, and those materials are "purchased" against Budget Appropriation "411" accounts. The School's expenditures are recorded on a calendar year basis in the year of purchase, whereas teachers' orders are charged to the 411 in the year of the teacher's order. All fees received, other than textbook rental fees, are receipted to the general fund. The School's general fund financial records are maintained on a calendar year basis, whereas textbook rental and other fees are charged to parents on a school year basis (or a shorter period of time). Furthermore, not all instructional materials are purchased (or withdrawn from the Central Supply warehouse) as of the beginning of a school year. Additional materials and supplies may be purchased during the 2004-2005 school year. For these reasons, data are not readily available to show precise correlations between the fees charged to parents and the costs of instructional materials utilized.
5. For the elementary schools, all students at the same grade level are charged the same amount for textbook rental and other fees. The total amount for kindergarten is \$60.00, the total amount for first grade is \$135.00, the total amount for second grade is \$123.00, the total amount for third grade is \$114.00, the total amount for fourth grade is \$105.00, and the total amount for fifth grade is \$108.00. Each of these totals includes a fee ranging from \$3.28 to \$4.80 for art/paper/pencil supply, in addition to fees for textbook rental and consumable instructional materials in reading, mathematics, social studies, music, etc. No fee is charged for elementary physical education. (See also Finding of Fact #22.)
6. Elementary school students with disabilities, including students placed in "full-time" placements in separate special education classrooms, are charged the same fees as their nondisabled peers in the same grade. Although the School reported that grade level books and materials are made available to all elementary students with disabilities, the School did not document the distribution of grade level books and materials to all students with disabilities. The School reports, and a records review confirms, that virtually all elementary students with disabilities spend some part of the school day in general education settings, and in addition some elementary students with disabilities follow the general education curriculum in a special education classroom.
7. Some elementary students with disabilities, including students with significant cognitive disabilities placed in a functional life skills (FLS) classroom, use grade level books and materials when in the general education setting, to the extent called for by their individualized education programs (IEPs), and these students use grade level books and materials in modified ways. However, the School acknowledges, and a records review confirms, that some elementary students with disabilities are not utilizing the grade level general education curricula for core academic subjects or are participating in general education classrooms for some, but not all subjects. These students do not use all of the textbooks and instructional materials for which they are charged. They use alternate textbooks, instructional materials and supplies in the special education classroom for which separate or additional fees are not charged.

8. It is the School's position that the average per student cost for the alternate textbooks, instructional materials, and supplies exceeds the grade level textbook rental and fees charged to the parents. The School submitted a list, without prices, of the alternate texts and instructional materials that are currently used or will be used during the 2004-2005 school year in the elementary FLS classroom. The School also submitted lists of, including prices for, the alternate texts, instructional materials and supplies used during the 2003-2004 school year in the School's elementary FLS classroom and another elementary special education classroom. The School computed the cost of textbooks and instructional materials used in the elementary FLS classroom to be at least \$261.89 per student. The School acknowledges that the lists do not make clear distinctions between re-usable materials and consumable materials, and the list for the FLS classroom incorporates the full cost of instructional materials from which the teacher creates individualized "packets," with the result that some materials that are designed to be consumable are actually re-usable. The School computed the cost of textbooks and instructional materials used in another elementary special education classroom to be \$75.32 per student (i.e., less than the amount charged to the parents). However, the records review confirms that the students currently in this class also use additional grade level textbooks and instructional materials.
9. For the middle school schools, each student's textbook rental and class fees are determined by his/her designated class schedule. For sixth grade, this is a change from the method used in preceding school years. There is, however, some standardization by grade level, as most students are enrolled in the same core academic classes as all other students on the same grade level, and class schedules for nondisabled students and most students with disabilities vary only with respect to classes such as computer technology, fine arts, choir, band, etc. (See also Finding of Fact #22.)
10. Middle school students with disabilities who are not enrolled in a general education class for which a fee is charged when they are scheduled to spend one or more class periods in a special education resource room are charged less than their nondisabled peers because no textbook rental or other class fees are charged for resource room assistance time. Additional instructional materials used in the resource room by middle school students with disabilities are provided without additional charge. The class schedules of other middle school students in a full-time special education placement identify their classes as "Resource." These students are charged fees equal to or less than general education students at the same grade level.
11. The School submitted a list of, including prices for, the alternate texts, instructional materials and supplies used during the 2003-2004 school year in the School's middle school FLS skills classroom. The School computed the cost of textbooks and instructional materials used in the middle school FLS classroom to be \$337.60 per student. Like the comparable list for the elementary FLS program, the list for the middle school FLS classroom does not make clear distinctions between re-usable materials and consumable materials.
12. For high school students, fees are not standardized by grade level. There are fees for each class, and each student is charged the applicable textbook rental and other fees for the classes in which the student is enrolled. For example, the fees for Physics I consist of a \$6.81 textbook rental fee plus a \$13.00 fee for supplies identified as "white copy paper for paper airplanes, mousetraps, gluesticks, masking tape, safety pins, etc." The fees for English 9 consist of 2 textbook rental fees totaling 14.24 and fees for 3 supplemental books totaling \$3.10, all of which are significantly less than 25% of the unit price, plus a \$2.00 fee for study guides. The fees for many, but not all, high school classes include a \$1.00 technology fee, and the fees for all world language classes include a \$2.00 fee for "cultural enrichment materials & activities." (See also Finding of Fact #23.)
13. Certain high school classes are designated as special education classes. These include classes called *Interpersonal Relationships, Work Adjustment, *Lifeskills, and Introduction to Occupations 1 and 2.

The Fee Schedule states a unit price only for the workbooks and a supplemental book used in Introduction to Occupations 1 and 2. For the other classes, fees are charged for packets and study guides and for various supplies. The School submitted sample instructional materials used in the high school special education classes. The samples are published materials, not teacher-made materials. For comparison, the School also submitted selected samples of study guides and instructional materials used in general education classes. These, too, are published materials, not teacher-made materials. (See also Finding of Fact #20.)

14. The Fee Schedule appears to identify a class as “Mildly/Moderately Mentally Handicapped” encompassing math, reading, social studies, independent living skills, life skills careers, fine motor skill activities, and mini units. The Complainant raised questions after reading a local newspaper article regarding the School’s fees. The local newspaper article erroneously identified this group of classes as a single class or program for which textbook rental of \$26.66 and an additional fee of \$130.60 are charged. This is an error. Although the School acknowledges that typically, students enrolled in these classes have full-time special education, non-diploma track placements for the full school year and are not enrolled in general education core academic classes, students may combine some of these classes with other special or general education classes, and students are not charged for classes in which they are not enrolled. As a sample, the School submitted a student’s class schedule showing that the student was charged only for classes in which the student is enrolled. Approximately one-third of the fees for these classes represent the estimated cost of consumable supplies. Although the School has not calculated actual costs, the estimated costs are comparable to general education classes using comparable supplies (e.g., family and consumer science classes). The Fee Schedule also identifies a class as “Severe/Profound Handicapped and Multiply Handicapped” for which fees totaling \$51 are charged for study guides, materials, and supplies. This program is called Functional Life Skills (FLS) and is identified on the students’ schedules as “Func Life Skills” 1 or 2, etc., class period by class period, and the students’ schedules show a composite fee for the year-long program.
15. The Fee Schedule, as adopted by the governing body, lists a \$2.50 fee for paper and printer cartridges used in the high school special education resource room. This is an error that was repeated in the local newspaper article regarding the School’s fees. To document that no fee is charged for use of the high school resource room, the School submitted the book rental/fee receipts of sample high school students with disabilities whose current schedules include one or more class periods in the resource room. A class period in the resource room is identified on students’ schedules as a “study” period. The sample students were not charged a fee for the “study” period on their schedules.
16. The fee for high school adaptive physical education (PE) is \$7.00. The Fee Schedule identifies the adaptive PE fee as “sporting goods and equipment” for a 2-cycle class. The School asserts that this is another error in the Fee Schedule, as the \$7.00 fee is charged for a 4-cycle class. (In the School’s block schedule system, each “cycle” is 9 weeks. A year-long class is a 4-cycle class.) The School has not reported or documented that students enrolled in adaptive PE are provided with lockers, copies, or study guides. The School acknowledges that adaptive PE activities include walking, which requires no sporting goods or equipment. However, adaptive PE also includes games and activities such as soccer, whiffle ball, softball, kickball, croquet, Frisbee toss, field hockey, and floor exercises. Some of these games and sports (e.g., whiffle ball and croquet) are not played in other PE classes. Some of these activities require sporting goods or equipment including adapted equipment such as soft soccer balls. The School does not limit enrollment in adaptive PE to identified students with disabilities. For example, general education students may take adaptive PE as an elective and have participated in adaptive PE when their activities were limited by doctor’s order. However, the School acknowledges that currently all students enrolled in adaptive PE are students with disabilities.

17. The fee for all other high school PE classes is \$3.00. The Fee Schedule identifies these PE fees as “lock & locker use, copies, study guides” for each 2-cycle class. Students, including both nondisabled students and students with disabilities, enrolled in these PE classes are not charged for the use of sporting goods and equipment.
18. The use of agenda books to record assignments is required or expected of all middle school and high school students. There are 13 middle school students with disabilities and 16 high school students with disabilities whose IEPs contain goals or benchmarks/objectives addressing use of the agenda book, in connection with learning study skills, organizational skills, etc. For the middle schools, there is a fee of \$3.50 for the agenda book. For the high school, the agenda book and student handbook are combined in a single spiral-bound book for which a \$5.00 fee is charged.
19. The Fee Schedule adopted by the governing body and the lists submitted by the School for this complaint investigation include personal care items. For example, the Fee Schedule for a high school FLS program identifies the program as “Severe/Profound Handicapped and Multiply Handicapped” and describes the personal care items as “Supplies - paper toweling, baby magic, diaper wipes, heavy duty rubber gloves, etc.” Although these items could be used for instructional purposes, the School has not documented that these personal care items are used primarily or exclusively for instruction. Rather, the School has simply incorporated into the fees certain costs charged to the 411 accounts. With its request for reconsideration, the School submitted sample IEP goal sheets that document that other materials (e.g., those identified in the Fee Schedule as “Cooking items”) are used for instructional purposes by some students.
20. Certain high school special education classes designed for some diploma-track students with disabilities are designated as * English, * Math, and * Science. The fees for these classes consist of \$10 for packets and study guides and \$10 - \$15 for supplies. The fees for these classes exceed the fees charged for comparable general education classes. The fee for *English is \$20 for 2 cycles, while the fees for English 9 and 10 are slightly less. The fee for * Math is \$20, whereas the fees for Pre-algebra, Algebra, and Geometry range from \$11.60 to \$12.68. The fee for * Science is \$25, whereas the fee for Biology is \$20.74, the fee for Physical Science is \$16.03, the fee for Chemistry is \$22.75, and the fees for Earth Science and Space (adjusted to account for their shorter duration) are slightly less than \$25. In its request for reconsideration, the School asserts that the Fee Schedule contains a “printing” error regarding the number of cycles for which the specified fees are charged. Specifically, the School asserts that the fees for *English, *Math, and *Science are fees for year-long classes, whereas the general education classes are 1-cycle or 2-cycle classes. (In the School’s block schedule system, each “cycle” is 9 weeks. A year-long class is a 4-cycle class.)
21. The School utilizes a portion of its federal special education funds for the purchase of additional student-specific instructional materials and equipment needed by students with disabilities. When materials and equipment are purchased with federal special education funds (i.e., the Part B budget), those costs are not factored into the fees charged to parents.
22. The School charges fees for student handbooks that contain various notices required by federal law (e.g., a Civil Rights Equal Opportunity and Nondiscrimination Assurance Statement and the Federal Educational Rights and Privacy Act (FERPA) Notice), notices necessitated by the requirements of state law (e.g., the School Discipline Policy), and various additional policies of the local governing body (e.g., the Attendance Policy, the policy on Administration of Medication at School, and the Homework Policy). The final page of the handbook is a receipt to be signed by the student and a parent, as an indication of receipt of the handbook. The Elementary and Middle School Student/Parent Handbooks (\$1.00 fee each) are substantially the same. The High School Handbook and Agenda book contains substantially the same information and notices and, in addition, contains information regarding extracurricular clubs

and activities and a section that is the Student-Athlete Handbook. The high school agenda book and student handbook are combined in a single spiral-bound book (\$5.00 fee).

23. The School Board page of the School's website informs parents and others that the governing body's policies are available for review in all school buildings and the administrative office.

CONCLUSIONS:

1. Findings of Fact ##2, #3, #9, #10, #12, #13, #14, and #15 indicate that the School's Fee Schedule for middle school and high school students with disabilities is in general compliance with state law, and Finding of Fact #21 indicates that the School is utilizing special education funds for excess costs. However, Findings of Fact #4, #5, #6, #7, #8, and #11 indicate that the School has not demonstrated that its Fee Schedule is calculated on the basis of identified unit prices for textbooks and instructional materials actually used by some elementary and middle school students with disabilities, and Findings of Fact #19, #22 and #23 indicate that the School's Fee Schedule includes charges for personal care items and notices required by law. Therefore, violations of 511 IAC 7-21-6 are found.
2. Although the use of agenda books is required by the IEPs of some students with disabilities, Finding of Fact #18 indicates that fees for agenda books are incidental fees that are normally charged to nondisabled students or their parents. Findings of Fact #16 and #17 indicate that the School charges fees for adaptive PE that are not normally charged to nondisabled students or their parents, as the fee for adaptive PE includes charges for equipment whereas the fees for all other physical education classes do not include charges for equipment. Finding of Fact #19 indicates that the School charges fees for personal care items that are not normally charged to nondisabled students or their parents. Finding of Fact #20 indicates that the School charges fees for certain high school special education classes that exceed the fees listed in the Fee Schedule for comparable general education classes. Findings of Fact #4, #5, #6, #7, and #8 indicate that as to some elementary students with disabilities, the School has not demonstrated that the School charges only for books and instructional materials actually used by these students, whereas fees normally charged to nondisabled students or their parents represent identified unit prices for textbooks and instructional materials. Therefore, violations of 511 IAC 7-18-2 are found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

The Jay School Corporation shall:

1. Refund fees charged in the 2004-2005 school year for adaptive PE, except that the School may charge a fee for lock & locker use, copies, study guides if those materials are used in adaptive PE and if the fee is no greater than the fee charged for other physical education classes.
2. Refund fees charged in the 2004-2005 school year for personal care items charged to high school students in the program identified in the Fee Schedule as "Severe/Profound Handicapped and Multiply Handicapped."
3. Provide copies of required legal notices at no cost to students or their parents, at the beginning of each school year and to each newly-enrolled student upon enrollment.

4. Re-examine the fees charged to elementary students with disabilities who do not participate full-time in the general education curriculum or general education settings, and refund any portion of fees charged for any books, instructional materials, and supplies not actually used by the student(s).
5. Review the Fee Schedule in preparation for the 2005-2006 Fee Schedule, to incorporate corrections such as the deletion of the non-existent fee for the high school resource room and correcting the adaptive PE fee.

* For Corrective Actions #1, #2, and #4 above: If a student's fees remain unpaid in whole or in part as of the date the Corrective Action is to be completed, a credit may be given in lieu of a refund. If a student's fees have been paid in full, the School may give the parent the option to receive a credit for fees for the 2005-2006 school year in lieu of a cash refund.

Documentation of compliance shall be submitted to the Indiana Department of Education, Division of Exceptional Learners by February 7, 2005.